A.F.R

(110)

HIGH COURT OF CHHATTISGARH, BILASPUR

(DIVISION BENCH)

CORAM : HON'BLE SHRI JAGDISH BHALLA, ACTING C.J. & HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J.

WRIT APPEAL (P.R.) NO.2595 of 2007

APPELLANT PETITIONER : Balkrishna Agarwal, S/o Late Shri R.D.Agarwal, Aged about 49 years, R/o 24, Doongaji Colony, Raipur (C.G.)

Versus

RESPONDENTS

: 1. The State of Chhattisgarh, Through the Secretary, Cooperative Department, Mantralaya, D.K.S.Bhavan, Raipur (C.G.)
: 2. The Registrar, Co-operative Societies, Raipur (C.G.)
: 3. The Deputy Registrar, Co-operative Societies, Raipur (C.G.)
: 4. The Joint Registrar, Co-operative Societies, Raipur (C.G.)
: 5. Agroha Grih Nirman Sahkari Samiti Maryadit (a registered Co-operative Society), through its Manager Shri Krishna Kumar Gehre, Agrasen Nagar, Ring Road Chowk, Mahadeo Ghat Road, Raipur (C.G.)
: 6. Hari Ram Charitable Trust, through its President Shri Rajendra Goyal, New Timber Market, Fafadeeh, Raipur (C.G.)

Writ Appeal under Section 2 sub-section (1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006

Present :

Shri Rajeev Shrivastava, learned counsel for the appellant/petitioner.
Shri Vinay Harit, Dy. Advocate General for the State/respondents No.1 to 4.
Shri Ravish Chandra Agrawal, learned Senior Advocate with Shri S.S.Agrawal, counsel for the caveator/respondent No.6.

ORAL ORDER

(Passed on 03.07.2007)

The following oral order of the Court was passed by **Jagdish Bhalla, Acting C.J. :**

I.A.No.2.

This is an application for condonation of delay in filing the writ appeal.

Heard.

According to the appellant, there is delay of five days in filing the appeal.

With all fairness, learned Deputy Advocate General for the State states that he would not like to file any reply.

Accordingly, the delay which has been explained by the appellant is reasonable and is condoned.

Consequently, I.A.No.2 stands disposed of.

I.A.No.3.

This is an application for taking copy of the writ petition and synopsis on record.

Heard.

The copy of the writ petition and the synopsis are taken on record.

Accordingly, I.A.No.3 stands disposed of and the default pointed out by the office stands removed.

The matter is heard on admission.

This appeal arises out of the judgment and order dated 9th February, 2007, whereby the Hon'ble Single Judge has quashed the orders dated 13.04.2006 and 19.05.2006. Learned counsel for the appellant/respondent had granted concession before the Single Judge and admitted before this Court as well that Joint Registrar Co-operative Society has no power to cancel the registered sale deed dated 29th September 2001 executed in favour of respondent No.6. Inspite of the same the appellant filed this writ appeal praying for quashing of the order of the learned Single Judge on the ground that the learned Single Judge has no jurisdiction to quash the order dated 13.04.2006 as there was no specific prayer before the learned Single Judge, ignoring the fact that the appellant himself had considered as referred to hereinabove. In such circumstances, it was imperative on the part of the Single Judge to show interference in order dated 13.04.2006 though there was no specific

prayer but it was the consequence of the concession granted by the appellant.

In ***D.L.F. Housing Construction (P) Ltd.*** **vs.** ***Delhi Municipal Corpn. and others*****, (1976) 3 SCC 160,** it has been held in paragraph 21 of the judgment by the Apex Court that :

> "Before we part with this judgment we may note here in fairness to respondent No.4, a concession made by Dr. Singhvi on behalf of the colonizer. The concession is that all "open spaces", set apart for roads, streets, public parks, public lawns, etc., and other services, as distinguished from "open sites" earmarked for schools hospitals and other public utility buildings, shown in the sanctioned layout plans in these colonies vest in the municipal corporation free of cost and that his client has no objection to the transfer of such open spaces free of cost to the municipal corporation if such transfer has not already been made."

Similarly in ***State of Maharashtra*** **vs.** ***Ramdas Shrinivas Nayak and another*****, (1982) 2 SCC 463** the Supreme Court held as under:

> "..... Of course, a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

In ***P.K. Vasudeva and others*** **vs.** ***Zenobia Bhanot*****, (1999) 7 SCC 377** also, the Supreme Court is of the opinion that "where order passed on concession of counsel and the other party acted on such order, such party could not be permitted to challenge the same as there remained nothing to challenge the order having exhausted itself". Further in ***Mahabir Prasad Jain*** **vs.** ***Ganga Singh*****, (1999) 8 SCC 274** the Supreme Court held that "once concession or admission made by counsel or appellant regarding some point, such point cannot be raised again".

In the light of above, we are of the considered opinion that learned Single Judge has not committed any manifest error of law and has upheld the superiority of justice by quashing the order dated 13.04.2006 which is the consequence of the concession granted by the learned counsel for the appellant as referred to hereinabove. Since no other ground has been pressed by the learned counsel for the appellant, we find that there is no ground available to show interference with the order passed by the learned Single Judge. Accordingly, the appeal is dismissed.

Acting Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani